



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

5636 Southern Boulevard
Virginia Beach, VA 23462
www.deq.state.va.us

Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
(757) 518-2000

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO

INGENCO
Registration No. 61423

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1301, between the State Air Pollution Control Board and INGENCO, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Order.
6. "INGENCO" means Industrial Power Generating Corporation, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "INGENCO" means 1989 Jake Sears Drive, located in Virginia Beach, Virginia.
8. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
9. "Permit" means the DEQ air permit for the Ingenco facility which became effective October 16, 2001. Permit limits include visible (opacity) and pollutant emissions.
10. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. INGENCO, located at 1989 Jake Sears Drive in Virginia Beach, Virginia, operates subject to a permit dated October 16, 2001. The facility is an electric power generating plant utilizing 36 internal combustion, reciprocating engines powered by fuel oil or landfill gas (LFG from the City of Virginia Beach Mt. Trashmore No. 2 landfill) in combination with fuel oil. At full capacity INGENCO is designed to generate a maximum output of 12,600 kilowatts. This facility is the subject of permit conditions which require it to operate within certain emission limits and conduct an Initial Compliance Determination for Opacity, Nitrogen Oxides (NOx) and Carbon Monoxide (CO) concentrations while operating in various modes of fuels.
 - A. In the permit, emission factors for NOx and CO while firing LFG were derived from a combination of AP42, actual stack-test data from the engine manufacturer (Detroit Diesel) and performance data using "comparable rates to modern lean-burn dedicated gas engines" (provided by the source). Distillate oil emission factors were derived from AP42. Annual NOx and CO emissions were limited to 99.0 tpy each to keep the source non-major by limiting fuel throughputs (LFG and oil) based on their respective NOx and CO emission factors.

2. Since the facility commenced initial startup of its operation on February 1, 2002, DEQ has noted apparent violations of the State Air Pollution Control Law and Regulations. These incidents were identified in a Notice of Violation issued by DEQ on November 15, 2002, and include:
 - A. The provisions in Section 9 VAC 5-50-30 and Condition No. 22 of the permit require INGENCO to perform an Initial Compliance Determination for NO_x, CO and opacity emission rates no later than 180 days after startup of the facility (February 1, 2002). INGENCO did not accomplish an Initial Compliance Determination for NO_x, CO and opacity emission rates within the maximum time frame allotted (180 days of initial startup – July 30, 2002).
 - B. Condition No. 15 of the permit limits the CO emission rate at 0.1 lbs/mmBtu while firing fuel oils (MODEF or distillate). On October 2, 2002, DEQ received INGENCO's Initial Compliance Determination showing stack test results exceeding the permit limit at 0.356 lbs CO/mmBtu while firing MODEF.
 - C. On October 9, 2002, INGENCO submitted a request to modify its permit to increase NO_x and CO emission rate limits and to seek an exempt status from the provisions of the Part 60 Subpart WWW regulation.
3. Based on the above findings DEQ has determined that INGENCO is a synthetic minor source in violation of its permit. The violation is considered "Marginal" with regards to the impact on human health and the environment..

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders INGENCO, and INGENCO voluntarily agrees, to:

1. Within 60 days of the issuance by DEQ of a modified air permit, or within 180 days from the effective date of this Order, which ever occurs first, retest the diesel engines in accordance with applicable requirements in the permit effective at that time and demonstrate compliance with NO_x and CO emission limits contained in that permit.

2. Within 30 days of the effective date of this Order, pay a civil charge of \$ 6,078.80 in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of INGENCO, for good cause shown by INGENCO, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including certain matters addressed in the Notice of Violation issued to INGENCO by DEQ on November 15, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order only, INGENCO admits the jurisdictional allegations in the Order, but does not admit the factual allegations or legal conclusions contained herein.
4. INGENCO declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by INGENCO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders

as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. INGENCO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. INGENCO shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. INGENCO shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any

condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and INGENCO. Notwithstanding the foregoing, INGENCO agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to INGENCO. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve INGENCO from its obligation to comply with any statute,

regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. By its signature below, INGENCO voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 17, 2003.

for Robert G. Burnley
Robert G. Burnley, Director
Department of Environmental Quality

INGENCO voluntarily agrees to the issuance of this Order

By: [Signature]

Date: 7/15/03

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 15th day of

July, 2003, by Charles J. Peckard, who is
(name)

President of INGENCO on behalf of the Corporation.

(title)

[Signature]

Notary Public

My commission expires: November 30, 2006